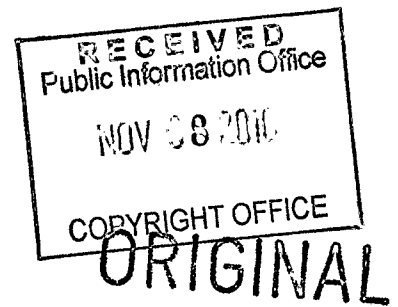


Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.



In the Matter of	)	
	)	
Distribution of 2004, 2005, 2006,	)	Docket No. 2012-6 CRB CD 2004-
2007, 2008 and 2009 Cable	)	2009 (Phase II)
Royalty Funds	)	Received
	)	
In the Matter of	)	
	)	
Distribution of 1999-2009 Satellite	)	Docket No. 2012-7 CRB SD 1999-
Royalty Funds	)	2009 (Phase II)
	)	

**INDEPENDENT PRODUCERS GROUP'S OPPOSITION TO JOINT  
MOTION TO ADMONISH IPG FOR FAILURE  
TO SERVE MPAA AND SDC**

**A. IPG'S RECORDS REFLECT SERVICE OF IPG'S MOTION.**

On September 15, 2016, Worldwide Subsidy Group LLC (a Texas limited liability company) dba Independent Producers Group ("IPG") filed a *Fourth Motion for Modification of March 13, 2015 Order*. On October 27, 2016, the Judges granted IPG's motion, noting that no opposition had been forthcoming.

Notwithstanding, on November 1, 2016, the Motion Picture Association of America ("MPAA") and the Settling Devotional Claimants ("SDC") filed a *Joint Motion to Admonish IPG for Failure to Serve MPAA and SDC* (the "*Joint*

*Motion*”), complete with declarations and exhibits attesting to the fact that neither the MPAA nor SDC received a copy of IPG’s motion, and seeking for IPG to be admonished. Noticeably absent from such declarations was any attestation as to those parties’ attempts to contact IPG’s counsel prior to the filing of the *Joint Motion*.

In fact, within minutes of the undersigned counsel seeing the *Joint Motion*, the undersigned located from his files and sent both parties a copy of the email by which he served both parties IPG’s *Fourth Motion for Modification*, on September 15, 2016. See **Exhibit A**. IPG’s counsel inquired whether or not such email was in their possession, to which both parties responded in the negative.

As reflected by **Exhibit A**, counsel for IPG prepared an email attaching the motion and believed that he sent such email to, collectively, each of five recipients that are counsel for the MPAA and SDC. As is his practice, he then printed out a copy thereof and placed it in his file. Nonetheless, counsel for the MPAA and SDC insist that they never received it, and counsel for IPG accepts their representation in good faith. It remains unclear why the MPAA and SDC did not receive the email, given that the email was prepared, sent, and printed out.

Counsel for IPG is fully aware of the need to serve all documents filed with the CRB on opposing counsel, and has always done so. Counsel for IPG is also

fully aware of the need for counsel to attempt informal resolution before burdening the Judges with unnecessary motions. Moreover, it is rather surprising that the MPAA and the SDC would suggest that IPG would be so brazen as to file a motion, not serve it on adverse parties, then expect no consequence following the inevitable order that either grants or denies such motion. That is, discovery of any malfeasance regardless of the outcome of the motion, would be inevitable.

**B. IPG DOES NOT HAVE A “HISTORY OF FLOUTING REGULATIONS GOVERNING SERVICE”.**

Moreover, contrary to the assertion of the MPAA and SDC, IPG does not have a “history of flouting the regulations governing service”. The only “evidence” of such cited in the motion is a ten year-old order issued by the Register of Copyrights. At the very least, this would confirm that IPG has done a sufficient job regarding service for the last ten years. However, the actual facts regarding the 2006 Order do not support the allegation that IPG has flouted service requirements, then or now.

Notwithstanding, IPG has now been drawn into addressing the circumstances that led to the June 26, 2006 order of the Register that harshly criticized IPG’s practices. To say the least, the 2006 order failed to recite several significant facts that contributed to issuance of the order, which facts were detailed in IPG’s *Motion to Reconsider Denial of Motion for Acceptance of Late-Filed*

*Response to the September Orders*, filed June 30, 2006 as part of all cable royalty proceedings 1998-2002, and all satellite proceedings 1996-2000.

IPG submitted a *Motion for Reconsideration* because it recognized multiple misstatements and mischaracterizations within the June 26 Order - - misstatements regarding why IPG did not respond to certain Orders, misunderstandings about IPG's actions, and language ascribing IPG with ill intentions that would logically serve IPG no purpose. IPG was, in fact, particularly perturbed because the June 26 Order relied on multiple inflammatory characterizations of IPG's actions to rationalize a draconian ruling, characterizations that were simply inaccurate and were based on speculation by the Register. More disturbing, was that the June 26 Order conspicuously omitted reference to certain acts taken by the Register that contributed significantly to IPG's initial failure to respond to the September Orders, which failure resulted in the need for a February 8 Order giving IPG an onerously short amount of time to prepare multiple pleadings.

As to the Register's characterization of IPG, and listed in the order recited, the Copyright Register found: a "disturbing pattern" of instances where IPG has not followed the proper procedure, that IPG has "assumed" that an untimely filing will be accepted as a matter of course, that IPG has exhibited a "seeming indifference" to the Register and its rules, that IPG has "repeatedly" failed to comply with the rules governing the service of pleadings, that IPG "blatantly

ignored” an Register Order, that IPG failed to comply with a December 8, 2005 Order “and offered no explanation for its failure to do so”, that IPG has a “disdain toward effecting proper service”, that IPG has “persistently” failed to comply with the rules, which demonstrates a “flagrant disregard” of the rules “as well as a lack of respect for the Register and the other parties in these proceedings.” Finally, the Register noted that it would not reward IPG for its “repeated transgressions” by accepting its late-filed Response.

These allegations were the result of (i) IPG’s failure to respond to five of the seven September Orders, (ii) IPG’s failure to respond to a December 8, 2005 Order, and (iii) IPG’s failure to re-serve its “Response to the September Orders” or “Reply Brief In Support of Motion to Accept Late-Filed Response to the September Orders”, by overnight mail to thirty-three parties. The facts before the Register, however, reflect that the first two acts occurred in significant part because of written *and* oral assurances by the Register’s Office that IPG had been “served with all the Orders it was supposed to receive”,<sup>1</sup> and the Register’s failure to inform IPG as to the existence of additional September Orders despite IPG’s clear, pointed written inquiry therein. As regards the third item above, it was a point so insignificant that it had been relegated to a footnote objection by those

---

<sup>1</sup> Notably, the false assurances to IPG came from the very individual that authored and signed the June 26, 2006 order that was so overwhelmingly critical of IPG.

parties challenging IPG's "Motion to Accept Late-Filed Response to the September Orders". Nonetheless, the Register utilized it as the stepping stone to allege IPG's "disdain toward effecting proper service", even though the only documents served following IPG's notification that service should have occurred by overnight mail to thirty-three parties was IPG's technical re-filing of its "Motion to Accept Late-Filed Response to the September Orders", and IPG's "Reply Brief In Support of IPG's Motion to Accept Late-Filed Response to the September Orders", both of which satisfied the requirements of 37 C.F.R. Section 251.44(g). Moreover, the latter was a document to which no response was allowed by the recipient parties under CARP rules, was served upon all parties *prior to* the deadline established by the Register (just not by "overnight mail"), and a pleading for which the Register waited four (4) months to rule upon (i.e., a pleading to which no exigency attached). The facts before the Register simply did not support the extraordinary allegations made by the Register, nor did the facts support what appeared to be a de facto punitive act toward IPG.

In a nutshell, the Register issued multiple orders relating to multiple royalty pools seeking information regarding outstanding disputes, but only served IPG with a handful of them. Confusingly, IPG was served with responses from some,

but not all, proceeding participants,<sup>2</sup> which responses addressed royalty pools other than the royalty pools for which IPG received the Register's orders. When IPG contacted the Register to inquire whether orders had been issued for several other royalty pools, IPG was informed that "it had been served with everything it was supposed to be served with." In fact, IPG had not.

By the time that IPG confirmed the error of information that had been provided by the Register, for which all other parties were provided two months to respond, the deadlines for response had passed. Consequently, IPG informed the Register and moved to have a late-filed acceptance of IPG's response. By an order issued on the afternoon of Wednesday, February 8, 2006, IPG was granted until Monday, February 13, 2006, to file the requested response. Such response necessarily required IPG to review approximately forty (40) filings by multiple other parties, several covering multiple royalty pools. The February 8, 2006 order effectively granted IPG two business days (because IPG was located in Texas, and could only make filings with the Copyright Office by overnight mail) to engage in the analysis and response for which the initial orders had granted all other properly served parties two months to perform, irrespective of the fact that the misstep was the making of the Register's Office.

---

<sup>2</sup> Ironically, while the June 26, 2006 order mentioned such fact, no comparable sanction or admonishment was made against the offending parties that did not serve their pleadings on other parties.

What ultimately prompted the June 26, 2006 order was IPG's untimely filing of the petitions to participate that all other participants had been provided two months to prepare, i.e., the notices of intent to participate in multiple different cable and satellite proceedings. As noted, IPG was effectively given two days to prepare its filings and arrange for filing in Washington, D.C., and the documents were ultimately deemed untimely. Untimely petitions to participate can be accepted if untimely for "good cause" and there is no prejudice to other parties, and untimely petitions to participate have been accepted months following the established deadline. IPG's filing arrived the morning after the Register asserted was the deadline, and no prejudice resulted to any party. As such, there could not have been a more compelling set of circumstances warranting acceptance of IPG's filings.

IPG had already had eight (8) years of filings without incident. The individual from the Register's Office that drafted and signed the June 26 order was one of two individuals that had actually set in motion the circumstances for IPG's delinquent filings, and in the June 26 order abjectly failed to acknowledge the misleading information she had provided to IPG, disregarded her contributing role in the matter, found nothing extraordinary to the remarkably short timeline she had provided to IPG to prepare and file multiple, voluminous petitions to participate,



then characterized IPG's actions with extremely vitriolic terminology regarding a wide variety of matters that had never previously been raised against IPG.

It is certainly the Judges prerogative to accept at face value the June 26, 2006 order as representative of IPG's practices as of 2006, and in spite of the actual facts that preceded such order. It is not the Judges prerogative to disregard IPG's practices since 2006, which have not displayed a "history of flouting the regulations governing service".

### **CONCLUSION**

For the foregoing reasons, IPG opposes the Joint Motion. No admonishment is warranted.

DATED: November 4, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
Brian D. Boydston, Esq.  
PICK & BOYDSTON, LLP  
10786 Le Conte Ave.  
Los Angeles, California 90024  
Telephone: (213)624-1996  
Facsimile: (213)624-9073  
Email: brianb@ix.netcom.com

Attorneys for Independent Producers  
Group

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of November, 2016, a copy of the foregoing was sent by electronic mail to the parties listed on the attached Service List.

\_\_\_\_\_/s/\_\_\_\_\_  
Brian D. Boydston

### **MPAA REPRESENTED PROGRAM SUPPLIERS**

Gregory O. Olaniran, Esq.  
Lucy Holmes Plovnick Esq.  
Mitchell, Silberberg & Knupp LLP  
1818 N Street, N.W., 8<sup>th</sup> Floor  
Washington, D.C. 20036

### **SETTLING DEVOTIONAL CLAIMANTS:**

Clifford M. Harrington  
Matthew MacLean  
Pillsbury, Winthrop, et al.  
P.O. Box 57197  
Washington, D.C. 20036-9997

## **EXHIBIT A**

## IPG Fourth Motion for Modification

---

**From:** "Brian D. Boydston, Esq." <brianb@ix.netcom.com>  
**To:** "goo@msk.com", "lhp@msk.com", "clifford.harrington@pillsburylaw.com",  
"matthew.maclean@pillsburylaw.com", "Victoria.lynch@pillsburylaw.com"  
**Cc:** "worldwidesg@aol.com" <worldwidesg@aol.com>  
**Subject:** IPG Fourth Motion for Modification  
**Date:** Sep 15, 2016 12:08 PM  
**Attachments:** IPG's Fourth Motion for Modification of March 13 2015 Order Copy.pdf

---

Counsel attached please find IPG's Fourth Motion for Modification  
filed today with the CRB.

Brian Boydston